

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Return Date: December 14, 2010
at 9:30AM

IN RE:

WELLINGTON HERNANDEZ

Case No. 10-37014
Chapter 13

Debtor.

**NOTICE OF MOTION FOR
APPROVAL OF MORTGAGE
LOAN MODIFICATION**

-----X
SIRS/MADAMS:

PLEASE TAKE NOTICE, the Debtor named herein, by Julius A. Rivera, Jr., their attorney, will move before Honorable Cecelia G. Morris, United States Bankruptcy Judge, at the Courthouse located at 355 Main Street, Poughkeepsie, New York 12601 on the 14th day of December, 2010 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an Order pursuant to Federal Bankruptcy Rule 9019 (a) approving the modification of a Mortgage Loan and for such other and further relief as the court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, shall be served and filed at least three (3) days prior to the return date thereof.

Dated: November 15, 2010

Yours, etc.

JULIUS A. RIVERA JR., ESQ.
806 South Street
Peekskill, New York 10566
914-734-1442

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE:

WELLINGTON HERNANDEZ

Case No. 10-37014 cgm
Chapter 13

**MOTION FOR AN ORDER
APPROVING THE MODIFICATION
OF A MORTGAGE LOAN**

Debtor.

-----X

TO: Honorable Cecelia G. Morris, U.S. Bankruptcy Judge

1. The debtor filed a Chapter 13 Bankruptcy petition in this Court on June 30, 2010.
2. Wells Fargo Bank, N.A. as Trustee for Option One Mortgage Loan Trust 2001-D, asset-Backed Certificates, series 2001-D (hereinafter Wells Fargo) filed a secured claim dated July 5, 2010 and docketed as claim number 5 on July 31, 2010 claiming a Mortgage Lien on the Debtors homestead real property located at 20 Wallkill Avenue, Middletown, New York, 10940. American Home Mortgage Servicing, Inc services the loan. It is claimed that the Debtors pre-petition arrearages on this loan are \$50,017.39, the total loan balance is \$156,508.71 and the current interest rate is 11.050%. Attached is a copy of the claim.
3. Wells Fargo has offered to modify the Mortgage Loan by capitalizing the arrearages, and reducing the interest to 2% for the 1st two years, 3% for the 3rd year and 4.190% at a fixed rate for the 4th and subsequent years with a Maturity date of September 1, 2031 which will fully amortize the loan. Attached is a copy of the offer.
4. The Debtor accepts this offer and respectfully requests that the Court enter an Order approving the modification of this loan. The Debtor also respectfully requests that it be directed by the Court that the claim of Wells Fargo shall be disallowed in the event that Wells Fargo does not either withdraw their claim docket as claim number 5 as aforementioned or amend the claim to reflect zero arrearages within 14 days of the date the Order approving the modification is docketed.

WHEREFORE, it is respectfully requested that the motion of the Debtor to obtain approval from the Court of the modification of the mortgage loan be granted as well as such other and further relief as the Court deems just and proper.

Dated: Peekskill, New York
November 15, 2010

/s/ Julius A. Rivera, Jr.

Julius A. Rivera, Jr. (JR7727)
806 South Street
Peekskill, New York 10566
914- 734-1442

B 10 (Official Form 10) (04/10)

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK POUGHKEEPSIE DIVISION		PROOF OF CLAIM
Name of Debtor: Wellington Hernandez		Case Number: 10-37014-CGM
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2001-D, Asset-Backed Certificates, Series 2001-D	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.	
Name and address where notices should be sent: American Home Mortgage Servicing, Inc 1525 S. Beltline Road, Suite 100 N Coppell, Texas 75019	Court Claim Number: <u>#5</u> (If known) Filed on: <u>7/31/2010</u>	
Name and address where payment should be sent (if different from above): American Home Mortgage Servicing, Inc 1525 S. Beltline Road, Suite 100 N Coppell, Texas 75019 Telephone Number: (800) 704-0800	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
1. Amount of Claim as of Date Case Filed: \$156,508.71 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.	5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.	
2. Basis for Claim: Money Loaned (See instruction #2 on reverse side.)	<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	
3. Last four digits of any number by which creditor identifies debtor: xxxxxx6191 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).	
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other: _____ Describe: 20 Wallkill Avenue, Middletown, New York 10940 Value of Property: not available Annual Interest Rate: _____ Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$50,017.39 Basis for perfection: Recordation of Lien Amount of Secured Claim: \$156,508.71 Amount Unsecured \$0.00	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____	
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)		
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: July 31, 2010	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. /s/ Lawrence J. Buckley as Creditor's Authorized Agent 972.643.6600 P.O. Box 829009 Dallas, TX 75382-9009	
		FOR COURT USE ONLY

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION**

IN RE:

WELLINGTON HERNANDEZ

§
§ **CASE NO. 10-37014-CGM**
§
§ **CHAPTER 13**
§
§ **JUDGE CECILIA G. MORRIS**

EXHIBIT A

ITEMIZATION OF CLAIM AND SUMMARY OF SUPPORTING
DOCUMENTS FOR CLAIM OF AMERICAN HOME MORTGAGE SERVICING, INC, AS SERVICING
AGENT FOR WELLS FARGO BANK, N.A., AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST
2001-D, ASSET-BACKED CERTIFICATES, SERIES 2001-D
REGARDING CERTAIN COLLATERAL DESCRIBED AS:
20 WALLKILL AVENUE, MIDDLETOWN, NEW YORK 10940

SECTION 1. ITEMIZATION OF CLAIM

1. Total Debt (As of June 30, 2010)	\$156,508.71
2. Interest rate as of June 30, 2010	11.05%
3. Interest from Last Paid Installment	\$26,750.12
4. Detail of arrearage: (through June 30, 2010)	
17 payments June 2008 through October 2009 @ \$1,494.24 each:	\$25,402.08
8 payments November 2009 through June 2010 @ \$1,528.61 each:	\$12,228.88
Accrued late charges	\$177.60
** PRE-PETITION ATTORNEY FEES AND COSTS	\$3,672.55
Attorney Fees \$1,000.00	
Court Costs \$845.00	
Filing Costs \$211.38	
Recording Costs \$45.00	
Sale Costs \$441.50	
Service Costs \$804.67	
Title Report Costs \$325.00	
** PRIOR BANKRUPTCY FEES AND COSTS	\$1,150.00
Prior Bankruptcy Attorney Fees \$850.00	
Prior Bankruptcy Costs \$300.00	
** POST-PETITION BANKRUPTCY FEES AND COSTS	(\$0.00)
** OTHER CHARGES	
Inspection Fees	\$182.40
Appraisal Fees	\$495.00
NSF Fees	\$60.00
Escrow Shortage	\$6,667.58
Credit Report Fees	\$3.50
Less Suspense Account Balance	(\$22.20)

GERALD M. SHAPIRO
LICENSED IN ILLINOIS & FLORIDA
DAVID S. KREISMAN
LICENSED IN ILLINOIS
JOHN A. DICARO

SHARI SELTZER BARAK
MANAGING PARTNER

JOSE ARIAS, JR.
JOHN D. DELLO-IACONO
JENNIFER RANDO CRISTIANO

Law Offices of
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ROCHESTER OFFICE

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MANAGING PARTNER

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MICHAEL J. CHATWIN
JILLIAN K. FARRAR
GARY M. KANELIS
ANNE MILLER-HULBERT
ELLIS M. OSTER

KAREN R. MCCLOSKEY
OF COUNSEL

November 12, 2010

Honorable Cecelia G. Morris
U.S. Bankruptcy Court
355 Main Street
Poughkeepsie, NY 12601

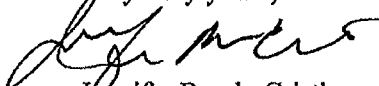
RE: Wellington Hernandez
10-37014

Dear Judge Morris,

Please be advised we represent American Home Mortgage in the above referenced loss mitigation. Mr. Hernandez was approved for a modification. Proposed terms have been sent to Debtor's Counsel for review. A final modification agreement is prepared for Mr. Hernandez. Once modification agreement is completed it will sent to Debtor's counsel for Mr. Hernandez's execution.

Thank you for your cooperation.

Very truly yours,



Jennifer Rando Cristiano

Print

<http://us.mg4.mail.yahoo.com/dc/launch?.gx=1&.rand=647otma8io3ib>

Good morning,

My name is Ruslan Parseganyan with American Home Mortgage Servicing Inc. Attached is the Schedule A for a loan modification that has been granted for the borrower. In order to start the closing process, we would need Trustee or Courts approval for the loan modification in any active bankruptcy status. The Schedule A should be sufficient enough to render a Motion to modify the loan. If you need any additional information, please contact me via e-mail. Thank you.

Terms	Current	Modified/New			
UPB	\$110,176.62	\$164,397.02			
Interest Rate	11.050%	2.000%	2.000%	3.000%	4.190%
Monthly P&I	\$1,110.04	YEAR1:	\$804.61		
		YEAR2:	\$804.61		
		YEAR3:	\$877.79		
		YEAR4:	\$965.35		
Maturity Date	9/1/2031	9/1/2031			
Due Date	6/1/2008	12/1/2010			
Product Type (ARM to FIXED, etc)	FIXED	STEP/FIXED			
Principal Forgiveness	N/A	\$0.00			
Balloon Payment	N/A	\$0.00			
Balloon Date	N/A				
Modification Effective Date	N/A	11/1/2010			

Ruslan Parseganyan
Loan Consultant II
BK Loss Mitigation Negotiator
American Home Mortgage Servicing Inc.
4875 Belfort Road Suite 130
Jacksonville FL 32256

Office: 1-877-304-3100 ext. 66050
Fax: 1-866-239-8756
Ruslan.Parseganyan@ahmsi3.com

-----Original Message-----

From: A4AJKSNLD05001
Sent: Monday, October 25, 2010 10:39 AM
To: Ruslan Parseganyan
Subject:

This E-mail was sent from "RNPEBB6C8" (Aficio MP 5000).

Scan Date: 10.25.2010 10:39:13 (-0400)
Queries to: A4AJKSNLD05001

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Loan Modification Agreement Schedule A

Name of Borrower(s): WELLINGTON HERNANDEZ

Loan Number: 4936191

DESCRIPTION OF TOTAL AMOUNT DUE	AMOUNT DUE
Current Principal Balance	\$110,176.62
Total Amount Capitalized	\$54,220.40
NEW PRINCIPAL BALANCE	\$164,397.02

BALLOON LOAN DISCLOSURES (if applicable)

Amortizing Amount	\$164,397.02
Deferment Amount	\$0.00
Total Balloon Payment *	\$0.00

* The Balloon Payment is subject to change if your loan contains a variable rate feature.

ITEMIZATION OF AMOUNT DUE	Deferred Amount	Total Due
Delinquent/Unpaid Interest		
From 5/1/2008		
To 10/31/2010		\$30,018.74
Attorney Fee/Costs	\$0.00	\$5,622.55
Unpaid Taxes / Unpaid Insurance / Escrow Reserves	\$0.00	\$18,788.91
Modification Fee	\$0.00	\$0.00
Document Preparation Fee	\$0.00	\$0.00
Title Fee (if applicable)	\$0.00	\$0.00
Property Preservation	\$0.00	\$0.00
Property Inspection	\$0.00	\$57.60
Broker Price Opinion (BPO) (Estimated Value of Property)	\$0.00	\$495.00
Borrower Interview	\$0.00	\$0.00
Interest on Secured Advances (AHMSI paid funds on behalf of borrower)	\$0.00	\$0.00
Late Charges	\$0.00	\$177.60
Demand Fee	\$0.00	\$0.00
Fax Fee	\$0.00	\$0.00
Non-Sufficient Funds (NSF) (Returned Check Fees)	\$0.00	\$80.00
	\$0.00	\$0.00
	\$0.00	\$0.00
TOTALS	\$0.00	\$55,220.40
	Borrower Contribution	\$1,000.00
	Mortgage Insurance Contribution	\$0.00
	Total Deferred Amount	\$0.00
	Amount towards 1st payment due	\$0.00
	Total Amount Capitalized	\$54,220.40

New Principal and Interest Payment Effective : ** 12/1/2010	\$804.61
Monthly Tax Payment ***	\$365.33
Monthly Insurance Payment ***	\$93.17
Monthly Mortgage Insurance Payment	\$0.00
Total Payment	\$1,263.11

** If your loan contains an variable rate feature, your monthly principal and interest payment is subject to change based on the terms of the Note and Modification Agreement.

*** Includes estimated amount for the monthly escrow payment (which is subject to change).

Borrower Initials here: W/H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Case No. 10-37014 (cgm)
IN RE: Chapter 13

WELLINGTON HERNANDEZ,

Debtor.

-----X

ORDER

Upon the Motion of the Debtor returnable before the undersigned on December 14, 2010 for an Order pursuant to Bankruptcy Rule 9019 (a) approving a Mortgage Loan Modification, and there being no opposition to said Motion. it is

ORDERED that the modification of the Mortgage Loan which loan is evidenced by Claim number 5 dated July 31, 2010 and Docketed on July 31, 2010, is hereby approved, and it is

ORDERED that claim number 5 is disallowed if the Claim is not withdrawn or amended to reflect zero arrearages within 14 days of the date that this order is docketed.

Dated: , 2010
Poughkeepsie, New York

Honorable Cecelia G. Morris
UNITED STATES BANKRUPTCY JUDGE

AFFIDAVIT OF SERVICE

State of Florida)
) SS.:
County of Volusia)

I, Elizabeth Rivera, being duly sworn, say: I am not a Party to the action, am over 18 year's of age and reside at Daytona Beach Florida. On November 15, 2010 I served the within Notice of Motion for approval of a Loan Modification pursuant to Federal Rule of Bankruptcy Procedure 9019(a), Exhibits and Proposed Order by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within the State of Florida, addressed to each of the following person at the last known address set forth after each name below and attached hereto:

Office of the U.S. Trustee
74 Chapel Street, Suite 200
Albany, New York 12207

Jeffrey L. Sapir, Chapter 13 Trustee
399 Knollwood Road, Suite 102
White plains, New York 10603

Shapiro, Dicaro & Barak, LLC.
ATT: Jennifer Rando Cristiano Esq.
105 Maxess Road
Suite N109
Melvill, New York 11747

/S/ Elizabeth Rivera

Elizabeth Rivera

Sworn to before me

This 15th day of November 2010

/s/ Diane E. DiGirolamo
NOTARY PUBLIC

DIANE E. DIGIROLAMO
Notary Public, State of Florida
Commission No. DD930768
Commission Expires: October 6, 2013